54TH CONGRESS, 1st Session. SENATE. REPORT No. 937.

IN THE SENATE OF THE UNITED STATES.

MAY 13, 1896.—Ordered to be printed.

Mr. ROACH, from the Committee on Pensions, submitted the following

REPORT:

[To accompany S. 810.]

The Committee on Pensions, having had under consideration the bill (S. 810) entitled "An act to amend an act granting pensions to the soldiers and sailors of the Mexican war, and for other purposes," approved January 29, 1887, beg leave to make the following report:

This bill, 810, amending the act of January 29, 1887, directs that the act—

shall be so construed as to include the surviving paymasters' clerks in the Army as of the same relative rank and grade as pursers' clerks in the Navy, and that the surviving paymasters' clerks of the Army and the widows of those who have died shall be entitled to all the rights and benefits given by the said act of 1887 to pursers' clerks in the Navy.

The act of January 29, 1887, has been construed as not including these clerks as officers of the military service of the United States. The object of this bill, 810, amending the act of 1887 is to construe the said act so as to include clerks of paymasters of the Army.

It is submitted that the construction placed upon the act of 1887 by the Pension Bureau is erroneous, and that the language, as well as the spirit and intent of that act, does include said clerks. These clerks to Army paymasters are appointed by the paymaster and confirmed by the Secretary of War. (See sec. 1190, Revised Statutes.)

Clerks to paymasters of the Navy are appointed by the paymaster and confirmed by commander of vessels. (See Regulations.)

The appointment of the clerks in both Army and Navy are made in the same way. That for the Army is a little more formal, in that it has to be approved by the head of the Department, while that for the Navy has to be approved only by the commander of the ship. If one is an officer of the Navy, the other must be an officer of the Army.

It has been decided many times that the clerk to paymaster of the Navy is an officer of the Navy. (See the case of Hindee *v.* United States, in the Court of Claims, Washington Law Reporter for April 13, 1887, No. 15, p. 234.)

This was a case in which the claimant, clerk of paymaster of the Navy, claims longevity pay as an officer of the Navy. The court decided he was an officer and entitled to his longevity pay. The court says, in conclusion, page 236:

In our opinion the benefits allowed by the act of 1883 to officers of the Navy apply not only to those who are strictly and technically such by appointment, as provided

by the Constitution, but to all who are called, recognized, or treated as such by the statutes, the regulations, or the practice of the Navy Department, and that paymasters' clerks are among the latter class.

The case was taken by the United States to the Supreme Court and the judgment affirmed.

Mr. Justice Miller, in delivering the opinion of the court, said:

We are of the opinion that the word "officers" is used in that statute in the more general sense which would include a paymaster's clerk; that this was the intention of Congress in its enactment, and that the collocation of the words mean this, etc.

Mr. Justice Miller quotes with approval Bogart's Case (2 Sawyer, Court of Claims Reports, 396; also Ex parte Reed, 100 United States Reports, 13), where the same doctrine is held.

The law is well settled that clerks to paymasters of the Navy are officers of the Navy, and as such have received longevity pay, bounty land, and pensions. Why should the language of the law of 1887 (Supplement, pages 523, 524, granting pensions "to the surviving officers of the military and naval services of the United States") be construed to include the paymasters' clerks of the Navy and exclude those of the Army? All the reasoning of the courts applied to clerks in the Navy will apply with equal force to those in the Army; indeed, with much more force when we recollect that the object in view by Congress in passing the act of 1887 was to reward those who had encountered hardship and peril in carrying their country's flag into inhospitable Mexico. It is well understood from the history of the Mexican war that those in the naval service of the United States saw but little service, involving but little hardship or peril. It can not be conceived that in passing the act of 1887 Congress intended to reward those who by force of circumstances did little, and to exclude from such reward those of similar position who did much to add glory to our arms and an empire to our domain. Bounty land has been given to the paymasters' clerks of the Army under the acts of February 11, 1847, and September 28, 1850, which gave bounty lands to officers and noncommissioned officers of the war with Mexico.

This question was elaborately considered by the Secretary of the Interior in 1852, and the decision reached that the paymaster's clerk in the Army was included in the expression "noncommissioned officers." The opinion is so able and conclusive that it is here inserted in full:

DEPARTMENT OF THE INTERIOR,
Washington, December 22, 1852.

SIR: I have examined the case of Luther R. Smoot, an applicant for bounty land under the act of February 11, 1847, and am of the opinion that the claim should be allowed. The fact that he was appointed from civil life does not make his capacity less military than that of the paymaster with whom he served.

Staff officers are regarded as in the military service of their country. They are part of the necessary appointments of an army, and are indispensable to its proper organization and efficiency.

In the administration of the acts granting extra pay and bounty land, commissioned officers of the staff have been admitted to their benefits.

I can see no reason, therefore, for excluding their noncommissioned officers. This has not been done as regards their "extra pay," and as the question is one of military construction, it seems to me, may be safely governed by it in the administration of the bounty land act.

Paymasters' clerks were originally taken from the noncommissioned officers of the line; but by the acts of February 5, 1838, paymasters were authorized to employ citizens "by and with the approbation of the Secretary of War;" and practically, when so appointed, they are regarded by law, regulation, and usage as were the soldiers—noncommissioned officers of the staff. The applicant accordingly received on his discharge the three months' extra pay allowed to "officers, noncommissioned

officers, musicians, and privates engaged in the military service of the United States in the war with Mexico."

I may further remark that noncommissioned officers are not such, strictly speaking, by enlistment, but by appointment.

It is not material, then, to inquire what the previous condition of the applicant was, whether he was a "citizen" or "soldier," if his appointment was legally and properly made, and he actually served and was honorably discharged.

Of these facts there is no question in the present case.

I conclude, therefore, that the applicant is entitled to the bounty land which he claims.

The papers in the case are herewith returned.

I am, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

The COMMISSIONER OF PENSIONS.

These army paymasters' clerks also received extra pay granted to officers. But in the administration of the pension laws these clerks have been excluded, while those of the Navy have been included.

Your committee think the law, in its meaning and spirit, embraces these clerks of army paymasters, and that it should have embraced them.

They therefore report back Senate bill 810 with a favorable recommendation.

The utmost effort has failed to disclose more than four persons now living who would be entitled to benefit under this act.